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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94389; File No. SR-NASDAQ-2021-054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Disapproving a Proposed Rule Change to Modify Nasdaq IM-5101-2 to Permit an Acquisition Company to Contribute a Portion of Its Deposit Account to Another Entity in a Spin-off or Similar Corporate Transaction

March 9, 2022.

I. Introduction

On June 24, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify Nasdaq IM-5101-2 to permit an acquisition company to contribute a portion of the amount held in its deposit account to a deposit account of a new acquisition company in a spin-off or similar corporate transaction. The proposed rule change was published for comment in the Federal Register on July 13, 2021.[3]

On August 25, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 30, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 92344 (July 7, 2021), 86 FR 36841 ("Notice"). Comments received on the proposal are available on the Commission's website at: https://www.sec.gov/comments/sr-nasdaq-2021-054/srnasdaq2021054.htm.

4 15 U.S.C. 78s(b)(2).

5 See Securities Exchange Act Release No. 92751, 86 FR 48780 (August 31, 2021). The Commission designated October 11, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

6 15 U.S.C. 78s(b)(2)(B).

change.[7] On January 3, 2022, the Commission extended the period for consideration of the proposed rule change to March 10, 2022.[8]

This order disapproves the proposed rule change because, as discussed below, the Exchange has not met its burden under the Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirements that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[9]

II. Description of the Proposed Rule Change

Generally, the Exchange will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.[10] However, the Exchange currently will permit the listing of a company whose business plan is to complete an initial public offering ("IPO") and engage in a merger or acquisition with one or more unidentified companies within a specific period of time ("Acquisition Company" or "SPAC"), if the company meets all applicable initial listing requirements, as well as certain conditions described in Nasdaq IM-5101-2.[11] Among other things, Nasdaq IM-5101-2 requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the Acquisition Company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an insured depository institution, or in a separate bank account established by a

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7 See Securities Exchange Act Release No. 93219, 86 FR 55664 (October 6, 2021) ("OIP").

8 See Securities Exchange Act Release No. 93891, 87 FR 998 (January 7, 2022).

9 15 U.S.C. 78f(b)(5).

10 See Nasdaq IM-5101-2.

11 See id.

registered broker or dealer (collectively, a "deposit account").[12] In addition, Nasdaq IM-5101-2 requires that within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the Acquisition Company specifies in its registration statement, the Acquisition Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.[13] Nasdaq IM-5101-2 further requires each business combination to be approved by a majority of the Acquisition Company's independent directors.[14] If the Acquisition Company holds a shareholder vote on a business combination, the business combination must be approved by a majority of the shares of common stock voting at the meeting and public shareholders voting against the business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated.[15] If a shareholder vote on a business combination is not held, the Acquisition Company must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Act, which regulate issuer tender offers.[16]

The Exchange now proposes to modify Nasdaq IM-5101-2 to allow a SPAC listed under that rule to contribute a portion of its deposit account to a deposit account of a new entity in a spin-off or similar corporate transaction ("SpinCo SPAC"). According to the Exchange, when a

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12 See Nasdaq IM-5101-2(a).

13 See Nasdaq IM-5101-2(b).

14 See Nasdaq IM-5101-2(c).

15 See Nasdaq IM-5101-2(d).

16 See Nasdaq IM-5101-2(e).

SPAC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent business combination with its ultimate target; however, the Exchange believes that because a SPAC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.[17] The Exchange states that it is proposing to modify Nasdaq IM-5101-2 to permit what it believes is a more efficient structure whereby a SPAC can raise in its IPO the maximum amount of capital it anticipates it may need for a business combination transaction and then "rightsize" itself by contributing any amounts not needed to a SpinCo SPAC, which would be subject to the provisions of Nasdaq IM-5101-2, in the same manner as the original SPAC, and spun off to the original SPAC's shareholders.[18]

Specifically, proposed Nasdaq IM-5101-2(f) would provide that a SPAC will be permitted to contribute a portion of the amount held in the deposit account to a deposit account of another entity (the "Contribution") in a spin-off or similar corporate transaction, subject to the following conditions:

(i) the requirements set forth in Nasdaq IM-5101-2(d) and (e) that shareholders of a SPAC must have the right to convert or redeem their shares of common stock into a pro rata share of the aggregate amount in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) at the times specified in such paragraphs may be based on the amounts in the deposit account of the SPAC at such times after having been reduced by the Contribution provided that, in connection with the Contribution, the SPAC's public

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17 See Notice, supra note 3, at 36841. The Exchange further states that "[t]his has resulted in the inefficient, current practice of SPAC sponsors creating multiple SPACs of different sizes at the same time, with the intention to use the SPAC that is closest in size to the amount a particular target needs." Id.

18 See id. The 36-month period to complete a business combination under Nasdaq IM-5101-2 would, however, be calculated for each SpinCo SPAC based on the date of the original SPAC's effective registration statement.

shareholders shall have had the right, through one or more corporate transactions, to redeem a portion of their shares of common stock (or, if units were sold in the SPAC's IPO, units) for their pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(ii) the public shareholders of the SPAC receive shares or units of the SpinCo SPAC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the SPAC in lieu of being entitled to receive shares or units in the SpinCo SPAC;

(iii) the amount distributed to the SpinCo SPAC will remain in a deposit account for the benefit of the shareholders of the SpinCo SPAC in the same manner as described in Nasdaq IM-5101-2(a);

(iv) the SpinCo SPAC meets all applicable initial listing requirements, as well as the conditions described in Nasdaq IM-5101-2(a) through (e); it being understood that, following such spin-off or similar corporate transaction: (A) for purposes of Nasdaq IM-5101-2(b) the 80% described therein shall,[19] in the case of the SPAC, be calculated based on the aggregate amount remaining in the deposit account of the SPAC at the time of the agreement to enter into the initial combination after the Contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be calculated based on the aggregate amount in its deposit account at the time of its agreement to enter into its initial combination,[20] and (B) for purposes of Nasdaq IM-5101-2(d) and (e),[21] the right to convert and opportunity to redeem shares of

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19 See supra note 13 and accompanying text, for a description of the requirements of Nasdaq IM-5101-2(b).

20 As the Exchange states, this amount would be calculated after giving effect to the SpinCo SPAC's contribution to a subsequent SpinCo SPAC, if any. See Notice, supra note 3, at 36842.

21 See supra notes 15-16 and accompanying text, for a description of the requirements of Nasdaq IM-5101-2(d) and (e).

common stock on a pro rata basis, respectively, shall, in the case of the SPAC, be deemed to apply to the aggregate amount remaining in the deposit account of the SPAC after the contribution to the SpinCo SPAC, and, in the case of the SpinCo SPAC, be deemed to apply to the aggregate amount in its deposit account;

(v) in the case of the SpinCo SPAC, and any additional entities spun off from the SpinCo SPAC, each of which will also be considered a SpinCo SPAC, the 36-month period described in Nasdaq IM-5101-2(b) (or such shorter period that the original SPAC specifies in its registration statement) will be calculated based on the date of effectiveness of the SPAC's IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the SPAC and one or more SpinCo SPACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the deposit account established by the SPAC as described in Nasdaq IM-5101-2(a) (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account).[22]

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed SPAC (the "Original SPAC") determines that it will not need all the cash in its deposit account for its initial business combination, the Original SPAC will designate the excess cash for a new deposit account of a SpinCo SPAC (the "SpinCo Deposit Account," and the amount retained in the deposit account of the Original SPAC, the "Retained SPAC Deposit Account").[23] The Exchange states that the amount designated for the SpinCo Deposit Account must continue to be held for the benefit of the shareholders of the Original SPAC until the completion of the spin-off transaction and, following the spin-off of the

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22 Proposed Nasdaq IM-5101-2(f) provides that the conditions set forth in the proposed rule would similarly apply to successive spin-offs or similar corporate transactions, "mutatis mutandis."

23 See Notice, supra note 3, at 36841-42.

SpinCo SPAC to the Original SPAC's shareholders, the SpinCo Deposit Account would be subject to the same requirements as the deposit account of the Original SPAC.[24]

According to the Exchange, the SpinCo SPAC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo SPAC and, prior to the effectiveness of the registration statement, the Original SPAC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo Deposit Account divided by the per share amount in the Original SPAC's deposit account (the "redemption price").[25] The Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo SPAC's registration statement, the Original SPAC would contribute the SpinCo Deposit Account to a deposit account held by the SpinCo SPAC in exchange for shares or units of the SpinCo SPAC, which the Original SPAC would then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo SPAC's effective registration statement.[26]

According to the Exchange, the Original SPAC would then continue to operate as a SPAC until it completes its business combination and would offer redemption rights to its public shareholders in connection with that business combination in the same manner as a traditional SPAC, while the SpinCo SPAC would operate in the same manner as a traditional SPAC, except that it could effect a subsequent spin-off prior to its business combination like the Original

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24 See id. at 36842.

25 See id. According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original SPAC pursuant to Rule 13e-4 and Regulation 14E of the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original SPAC for the purpose of facilitating the redemption. See id. at 36842 n.4.

26 See id. at 36842.

SPAC.[27] The Exchange states that if SpinCo SPAC does not elect to effect a spin-off, it would proceed to complete an initial business combination and offer redemption rights in connection therewith like a traditional SPAC.[28]

The Commission received comments broadly supporting the proposed rule change. Specifically, one commenter stated that the proposed rule change would introduce a "more efficient, cost-effective[,] and flexible" structure than provided for by the current SPAC listing rules, "while continuing to offer significant and appropriate protections to SPAC investors."[29] This commenter further argued that shareholders' ability under the proposed rule change to redeem their investment in connection with each specific business combination by the Original SPAC or a SpinCo SPAC would both increase flexibility and investors' ability to understand the companies that a SPAC plans to acquire and the risks associated with each such target company.[30] Another commenter similarly argued that the proposed rule change would permit a more efficient SPAC structure while "maintaining all of the investor protections" in the current SPAC listing rules.[31]

III. Discussion and Commission Findings

The Commission must consider whether the Exchange's proposal is consistent with the Act, including Section 6(b)(5), which requires, among other things, that the rules of a national

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27 See id. The proposed rule would provide that, for purposes of Nasdaq IM-5101-2(b), the Original SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the Retained SPAC Deposit Account, after the contribution to the SpinCo SPAC, at the time of its agreement to enter into its initial combination. Nasdaq further states that, similarly, a SpinCo SPAC must complete one or more business combinations with an aggregate fair market value of at least 80% of the aggregate amount remaining in the SpinCo Deposit Account at the time of its agreement to enter into its initial combination after giving effect to its contribution to any subsequent SpinCo SPAC.

28 See id.

29 See letter from Kellen Carter, ARK Investment Management LLC, to Vanessa Countryman, Secretary, Commission, dated August 2, 2021, at 1-2.

30 See id. at 2.

31 See letter from White & Case LLP to Vanessa Countryman, Secretary, Commission, dated August 3, 2021, at 1.

securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[32] Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."[33]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[34] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[35] Moreover, "unquestioning reliance" on a self-regulatory organization's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[36]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[37] With respect to

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32 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act.

33 Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

34 See id.

35 See id.

36 Susquehanna Int'l Group, LLP v. Securities and Exchange Commission, 866 F.3d 442, 447 (D.C. Cir. 2017).

37 The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial

SPACs, Nasdaq's current listing standards provide important investor protections,[38] including that at least 90% of the SPAC's IPO proceeds be held in a deposit account;[39] that within 36 months of the effectiveness of its IPO registration statement (or such shorter time period specified in the registration statement) the SPAC complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account;[40] and that public shareholders have a right to redeem their pro rata share of the full amount of the deposit account prior to any proposed business combination.[41]

As discussed above, Nasdaq now proposes to amend its listing standards to allow the SPAC to contribute a portion of the funds held in its deposit account to the deposit account of a new SpinCo SPAC, rather than use those funds for a business combination with the Original SPAC. While Nasdaq would provide shareholders in the original SPAC redemption rights with

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markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. See, e.g., Securities Exchange Act Release Nos. 91947 (May 19, 2021), 86 FR 28169, 28172 n.47 (May 25, 2021) (SR-NASDAQ-2020-057) ("Nasdaq 2021 Order"); 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR-NYSE-2019-67) ("NYSE 2020 Order"); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR-NYSE-2017-30) ("NYSE 2018 Order"); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., Nasdaq 2021 Order, 86 FR at 28172 n.47; NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR-NASDAQ-2019-059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR-NASDAQ-2020-001).

[38] See Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794, 44796 (July 31, 2008) (Order Granting Approval to Proposed Rule Change, as modified by Amendment No. 1, to Adopt Additional Initial Listing Standards to list Securities of Special Purpose Acquisition Companies) (NASDAQ-2008-013) ("2008 Order").

[39] See Nasdaq IM-5101-2(a).

[40] See Nasdaq IM-5101-2(b).

[41] See Nasdaq IM-5101-2(d). See also supra notes 12-16 and accompanying text.

respect to the funds contributed to the SpinCo SPAC, such rights would not extend to the funds retained by the Original SPAC. Instead, shareholders would be required to make a separate, later redemption decision with respect to the remaining funds in the Original SPAC's deposit account in connection with its business combination, once one is identified. Because Nasdaq proposes to permit successive SpinCo SPACs, shareholders could be required to evaluate multiple potential spin-offs and business combinations, and engage in multiple redemption processes if they desire to redeem their pro rata share of the full amount originally deposited in the SPAC's deposit account.

In support of its proposal, Nasdaq acknowledges this difference, but states its belief that it "does not adversely affect shareholders because the shareholders will still have the opportunity to redeem for the entire pro rata share of the trust account prior to completion of the business combination," although "the redemption right may be effected through two decisions."[42]

Current SPAC listing standards provide important protections for investors in SPACs, where the business plan is to engage in mergers or acquisitions with unidentified companies. As discussed above, Nasdaq's current SPAC listing standards require that SPAC IPO proceeds be held in a deposit account to be used for business combination purposes, and provide shareholders an efficient mechanism to redeem their entire pro rata share of those proceeds in a single transaction. This permits investors who do not support a business combination or otherwise lose

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42 See Notice, supra note 3, at 36843. Nasdaq also states that the proposal would provide public shareholders an additional, early redemption opportunity with respect to a portion of their holdings, before the time they would be able to do so in a traditional SPAC, and that public shareholders would maintain the ability to redeem the portion of their investment attributable to each specific acquisition after reviewing all disclosure with respect to that acquisition. See id. at 36842. Nasdaq further states that all other protections provided under IM-5101-2 would continue to apply, with adjustments only to reflect the potential for a spin-off of a new SPAC that is subject to all of the requirements of IM-5101-2, and any SpinCo SPAC would be required to satisfy all applicable initial listing requirements, like any other SPAC listing on Nasdaq. See id. at 36842-43. Nasdaq argues that the proposal would provide shareholders the opportunity to invest with a SPAC sponsor without spreading that investment across the sponsor's multiple SPACs. See id. at 36842.

faith in the abilities of the SPAC sponsors to fully redeem their pro rata share of the proceeds when a business combination is first presented to them. Under the Exchange's proposal, shareholders would lose this ability, and instead would have to wait until business combinations are presented by all successive SpinCo SPACs to fully redeem their pro rata share of the proceeds. By proposing to permit funds in the deposit account to be used to create new SPACs and to require shareholders to engage in a series of redemption processes in order to fully redeem their pro rata share of the funds originally deposited in the trust account, the efficiency of shareholder redemption rights and the effectiveness of the investor protections they were designed to provide could be undermined.

Further, by proposing to permit successive SpinCo SPACs, shareholders could be required to make assessments of a series of proposed business combinations of varying sizes as a result of their investment in the Original SPAC, rather than doing so once. As discussed above, SPACs are subject to heightened listing standards because of the special risks presented by an investment in a company where the business plan is to engage in a merger or acquisition of an unidentified company, and to ensure that appropriate investor protections are in place.[43] By increasing the number of decisions with respect to unidentified companies that SPAC investors

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43 In approving Nasdaq's original listing standards for SPACs, the Commission found that the investor protection requirements in IM-5101-2, including that at least 90% of the IPO proceeds and any concurrent sale be placed in a deposit account and that the public shareholders have conversion rights based on their share of the proceeds in that deposit account, provide additional safeguards for investors who invest in SPAC securities, and will help ensure that public shareholders who disagree with management's decision with respect to a business combination have adequate remedies. See 2008 Order, supra note 38, at 44796. The Commission further stated that those safeguards should help to ensure that SPACs that list securities on Nasdaq will have taken certain additional steps to address investor protection and other matters and that the rules provided baseline investor protections. See id. at 44796-97. The Commission has subsequently stated that "[b]ecause of their unique structure, and the fact that at the outset investors will not know the ultimate business of the company similar to a blank check company, the Commission approved Nasdaq listing standards for SPACs that were similar in some respects to the investor protection measures contained in Rule 419 under the Securities Act of 1933." Securities Exchange Act Release No. 63607 (December 23, 2010), 75 FR 82420, 82422 (December 30, 2010) (order approving SR-NASDAQ-2010-137).

would be required to make, and determine whether or not to exercise redemption rights, the Exchange's proposal could add considerable complexity to the structure and business combination strategies of SPACs, and exacerbate the investor protection concerns presented by companies where the business plan is to combine with another company that is unidentified at the time of investment.[44]

Nasdaq has not addressed these risks or how its proposal is consistent with Section 6(b)(5) of the Exchange Act in light of them, other than to state that shareholders will not be adversely affected because they still have the right to redeem their full pro rata share of the deposit account through more than one transaction.[45] Based on the above, the Commission cannot find that the proposal is consistent with the requirement under Section 6(b)(5) of the Act that the proposal be designed, among other things, to protect investors and the public interest.

As stated above, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."[46] For the foregoing reasons, the Exchange has not met its burden to demonstrate that its proposal is consistent with the Exchange Act. In particular, the Exchange has not adequately demonstrated that its proposal to allow a SPAC to contribute a portion of the amount held in its deposit account to the deposit account of a new SpinCo SPAC is consistent with investor protection, the public interest, and other relevant provisions of Section 6(b)(5) of the Exchange Act. Accordingly, for

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44 See supra note 43 (describing how Nasdaq's listing standards for SPACs are designed to address additional investor protection concerns presented by SPAC issuers given their unique structure). See also Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR-NYSE-2008-17) (approving listing standards for SPACs on NYSE and stating that SPACs are "essentially shell companies" and that the additional investor protection criteria on NYSE, which are comparable to those in IM-5101-2, "should further the ability of investors to protect and monitor their investment pending a [b]usiness [c]ombination").

45 See Notice, supra note 3, at 36843; proposed IM-5101-2(f)(vi).

46 17 CFR 201.700(b)(3).

the reasons set forth above, the Commission must disapprove the proposed rule change because the Exchange has not met its burden to demonstrate that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[47]

IV. Conclusion

The Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,[48] that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Exchange Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[49] that the proposed rule change (SR-NASDAQ-2021-054) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,
Assistant Secretary.

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[47] In disapproving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). As described above, two commenters expressed their belief that the proposal would result in a more efficient SPAC structure and use of capital. See supra notes 29-31 and accompanying text. For the reasons discussed throughout, however, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

[48] 15 U.S.C. 78s(b)(2).

[49] Id.

[50] 17 CFR 200.30-3(a)(12).